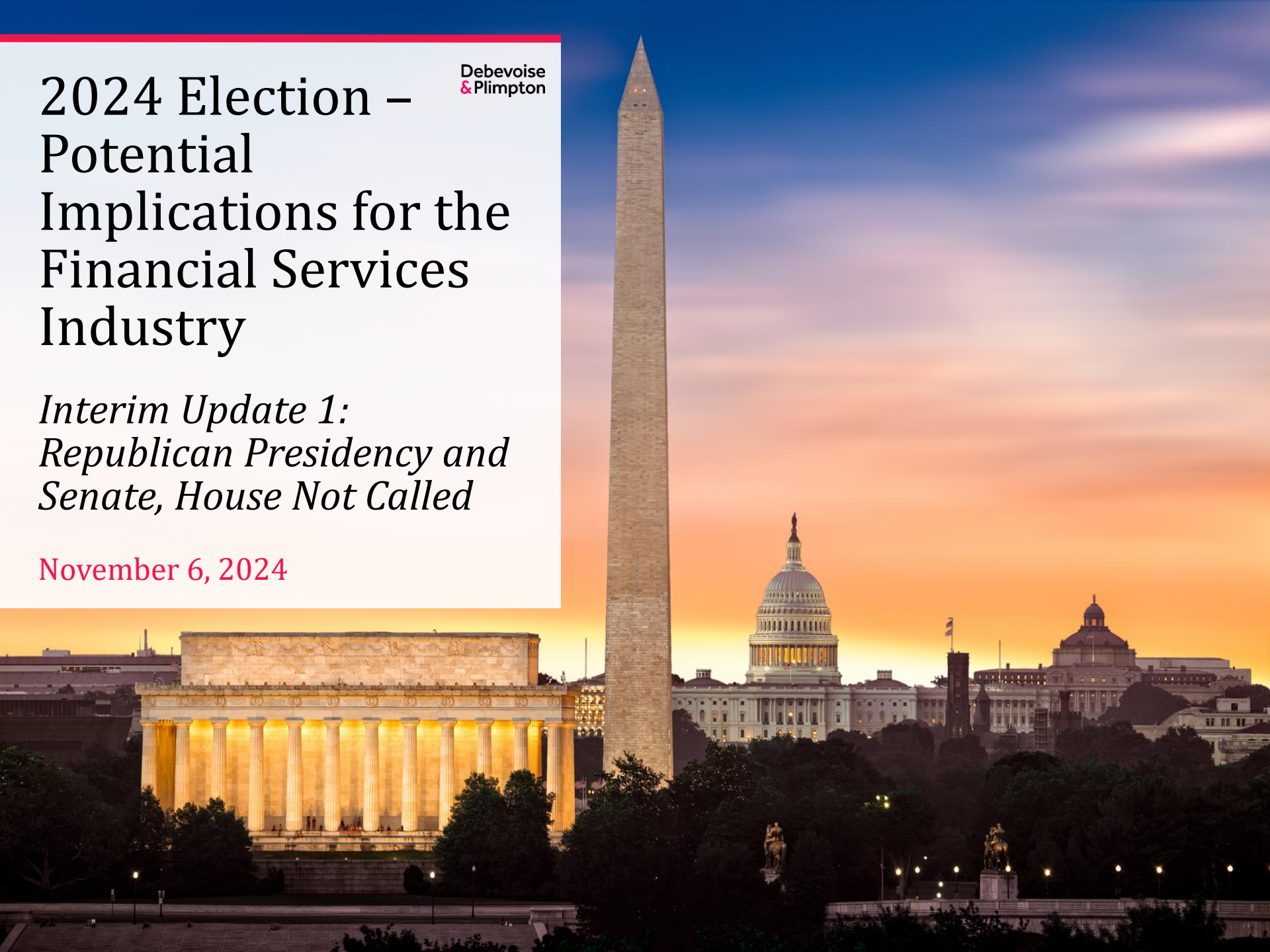



2024 Election – Potential Implications for the Financial Services Industry

Debevoise
& Plimpton


*Interim Update 1:
Republican Presidency and
Senate, House Not Called*

November 6, 2024





With the possible exception of crypto, financial services issues have not been a primary focus this election cycle. While projections are inherently uncertain, we hope this PowerPoint, which we will update periodically, is helpful as the industry navigates these changing times.



INTRODUCTION

The Introduction lays out the key agencies and the potential actions President Trump might take.

I	
II	<u>Key Personnel</u>13
III	<u>The Trump Administration’s Financial Services Agenda</u>29
	<u>III.A. Regulatory Agenda</u>31
	<u>III.B. Merger Review</u>42
	<u>III.C. Enforcement Agenda</u>45
IV	<u>Dynamic on the Hill</u>49

Key Takeaways

- Although he has not focused on financial services apart from crypto during his campaign, Trump will almost certainly have a significant impact on the status quo.
- In particular, Trump will be able to replace many key personnel. In the regulatory sphere it is often the case that *personnel is policy*.
- Trump could issue Executive Orders on day one and may revoke prior Biden Executive Orders.
- The Trump administration will be shaped by less agency deference by the judiciary in light of *Loper Bright*, including new uncertainty if prior rulemakings are invalidated by the courts.








Introduction

- The Trump administration may adopt a deregulatory approach that could be favorable to industry objectives (including mergers) and particularly friendly to crypto.
- The administration's stance on AI regulation, data privacy and technology oversight could shape AI's role in financial services. Trump has stated that AI development consistent with "free speech and human flourishing" will be encouraged.
- The Trump administration is likely to be confronted by less agency deference by the judiciary following the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*.
- Republican control of the Senate will facilitate confirmation of Trump personnel.
- Although some actions could be taken on day one, other changes at the agencies may take time to implement, such as changes to supervisory leadership and approach.



Trump Win Scenarios

Trump's ability to pursue his agenda will depend in part on the control of Congress. With Republicans taking the Senate, he will likely be able to get personnel choices confirmed with whom he is more aligned, and, depending on the outcome in the House, may be able to advance legislation, such as for crypto (see [slide 38](#)), and potentially reverse regulations under the Congressional Review Act (see slides [34](#) and [35](#)). Changes in personnel will change the direction of the agencies where they serve (see slides [27](#) and [28](#)).

WINNING PARTY	EXECUTIVE ORDERS	SENATE-CONFIRMED PERSONNEL	LEGISLATION	CRA LOOKBACK (tentatively as of August 1)
  WHITE HOUSE HOUSE SENATE		Trump will get personnel choices more aligned with his views through the Senate.	Bipartisan legislation, such as for crypto, more likely to be advanced.	N/A
  WHITE HOUSE HOUSE SENATE		Trump will get personnel choices more aligned with his views through the Senate.	Trump's preferred legislation, as on crypto, more likely to be advanced and would not need broad bipartisan support.	 <i>Certain late term Biden rules can be reversed—see slide 35.</i>

Key Agencies

Each of the key agencies is shaped by unique leadership structures, appointment terms and removal conditions. While awaiting nomination/Senate confirmation, an acting official may serve, but acting officials are subject to specific requirements and their actions can be susceptible to legal challenge.

FRB

- **The Federal Reserve** is an independent agency.
- There are seven members of the board, nominated by the President and confirmed by the Senate to 14-year terms.
- Governors of the board can only be removed “for cause.”

Treasury

- **The Treasury Department** is an executive agency.
- The Department is led by the Secretary of the Treasury, who is appointed by the President and confirmed by the Senate, with no specific term limit.
- The Secretary is removable at the President’s discretion.

OCC

- **The OCC** is an independent bureau of the Treasury Department.
- The OCC is led by the Comptroller of the Currency, who is appointed by the President and confirmed by the Senate (five-year term).
- Acting Comptroller Hsu could be removed at the President’s discretion.

FDIC

- **The FDIC** is an independent agency.
- Five board members: the Comptroller, the CFPB Director and three appointed by the President and Senate-confirmed for a six-year term. No more than three can be of the same party.
- Chairman Gruenberg arguably could be removed for cause based on the FDIC scandal.

CFPB

- **The CFPB** is an independent bureau within the Federal Reserve System.
- The CFPB is headed by a sole director appointed by the President, and confirmed by the Senate, to a five-year term.
- As found by the Supreme Court in *Seila Law vs. CFPB*, the CFPB director can be removed at the President’s discretion.

CFTC

- **The CFTC** is an independent agency.
- There are five Commissioners appointed by the President and confirmed by the Senate, and they serve staggered five-year terms. No more than three at a time can be from the same party.
- Commissioners are, for now, generally understood to only be removable “for cause.”
- The Chair is appointed by the President from sitting Commissioners.

SEC

- **The SEC** is an independent agency.
- There are five Commissioners appointed by the President and confirmed by the Senate, and they serve staggered five-year terms. No more than three at a time can be from the same party.
- Commissioners are, for now, generally understood to only be removable “for cause.”
- The Chair is appointed by the President from sitting Commissioners.

DOJ

- **The DOJ** is an executive department of the government.
- The DOJ is led by the Attorney General (AG), Deputy AG, and Associate AG, who are appointed by the President and confirmed by the Senate without a fixed term. They can be removed at the President’s discretion.

FTC

- **The FTC** is an independent agency.
- The Commission has five Commissioners, nominated by the President and confirmed by the Senate, each serving a seven-year term. No more than three Commissioners can be of the same political party. The President chooses one Commissioner to act as Chair.
- Commissioners can only be removed “for cause.”

President's Removal Powers

For certain agencies (the CFPB, OCC, SEC, CFTC, and FDIC), the removal powers of the President are less clear and have been the subject of litigation.

- **CFPB:** In 2020, the Supreme Court in *Seila Law LLC v. Consumer Financial Protection Bureau* eliminated the “for-cause” protection of the CFPB’s single director, holding that the director can be removed by the President “at will.”
- **OCC:** The OCC, like the CFPB, is led by a single head, and the Court noted in dicta in *Seila Law* that “the President could still remove the Comptroller for any reason so long as the President was ... ‘in a firing mood.’” There is less concern with replacing Acting Comptroller Hsu since he only serves in an “acting” capacity.
- **SEC & CFTC:** The SEC and CFTC’s implied for-cause removal protections are often attributed to *Wiener v. United States*, which supports such protections based on agency function. While it is an open question whether *Seila Law* undermines that functionalist rationale, as of now, an SEC or CFTC Commissioner can be removed only “for cause.” But with a change in administration, the President can demote the current Chair to Commissioner status and instead appoint one of the other sitting Commissioners as Chair.
- *Wiener’s* functionalist rationale has been weakened by *Seila Law*, which prioritizes executive control and is skeptical of limiting presidential power solely due to an agency’s function. Therefore, there is some legal uncertainty about whether SEC and CFTC Commissioners can be removed only “for cause.”

President's Removal Powers

For certain agencies (the CFPB, OCC, SEC, CFTC, and FDIC), the removal powers of the President are less clear and have been the subject of litigation.

- **FDIC:** There has not been much litigation about removal of the three appointed FDIC board members.
 - In *Calcutt v. FDIC* (2022), the 6th Circuit declined to rule only on whether they could be removed “for cause” (in Judge Murphy’s dissent, he elaborates against appointed board members having “for cause” protections, arguing that the President has “unfettered power to fire” the appointed members). The Supreme Court ruled on this case but did not address removal protections of FDIC board members.
 - Given the current composition of the Supreme Court, it’s possible that future decisions by the Court could reflect similar views to those articulated by Judge Murphy.
- Chairman Gruenberg arguably could be removed for cause based on the FDIC scandal.
- If Christy Goldsmith Romero has been confirmed as his replacement at the time Trump takes office, it would likely be harder to replace her. However, a Republican FDIC board majority may make it difficult for her to pursue her agenda, similar to how, during the Biden administration, the Democrat-majority board acted against Trump-appointed Chair Jelena McWilliams, leading to her resignation.

Potential Trump Actions

Please see slides [27](#) and [28](#) for potential agency picks under the Trump administration.

PERSONNEL REPLACEMENTS

- Trump will replace the Secretary of the Treasury, the Acting Comptroller of the Currency (**OCC**), withdraw the nomination of Christy Goldsmith Romero (if not confirmed) and instead nominate someone else to replace Marty Gruenberg as chair of the **FDIC** and replace the chairs of the **CFTC** and **CFPB**.
- Trump has also stated that he would like to fire **SEC** Chair Gary Gensler, but as a practical matter may only be able to remove Chair Gensler “for cause” or demote him to Commissioner status. Trump has suggested that he would let **FRB** Chairman Jerome Powell finish his term ending in May 2026.
 - However, regardless of Trump’s thinking, SEC chairs typically resign following a change in administration.
 - The President can only remove FRB governors “for cause.”
 - Chairman Powell, Vice Chair for Supervision Michael Barr and Governor Adriana Kugler all have terms expiring in 2026. Vice Chair Philip Jefferson’s expires in 2027.
- In Trump’s first year of presidency, he nominated 567 individuals for agency positions and only 300 were confirmed. Compared to previous administrations, Trump had far fewer agency confirmations in his first year.

“

“I would let [Powell] serve it out, especially if I thought he was doing the right thing.”
–Trump on re-appointing FRB Chairman Powell.

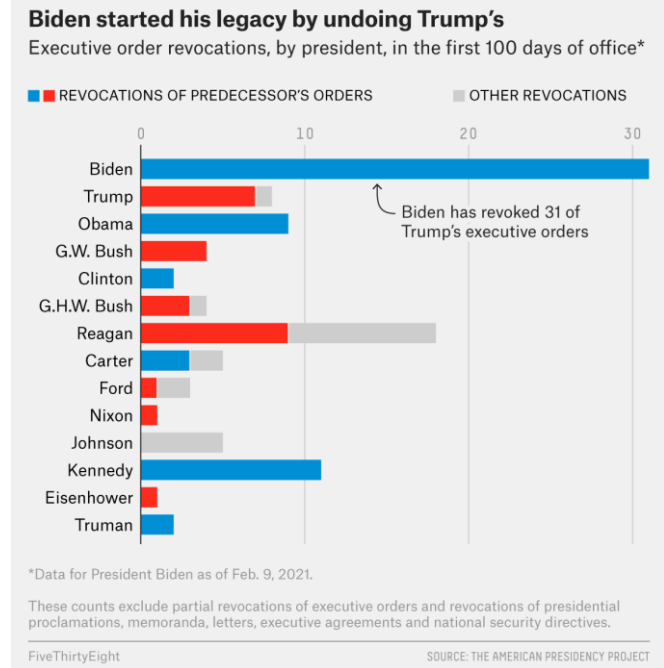
“

On day one, I will fire Gary Gensler and appoint a new SEC Chair.” –Trump’s speech at Bitcoin conference in July 2024.

Executive Orders

EXECUTIVE ORDERS

- Any incumbent President can revoke or modify an executive order.
 - In 2021, the Biden administration revoked a number of Trump Executive Orders, including Trump's Executive Order on Core Principles for Regulating the United States Financial System.
 - Similarly, Trump revoked a number of Obama Executive Orders.
- Trump could potentially revoke Biden's executive orders and could revoke Biden's revocation of his executive orders in his prior administration. Presidents can revoke multiple executive orders in a single action. Trump may revoke Biden Executive Orders such as:
 - Promoting Competition in the American Economy (July 2021).
 - Climate-Related Financial Risk (May 2021).



	Term Total # of Executive Orders	Average/Year
Donald Trump	220	55
Joe Biden	143	38

*Information as of October 20, 2024.
Source: [American Presidency Project](#).

Agency Deference Post-*Loper Bright*

- The Supreme Court’s decision earlier this year to overturn *Chevron* agency deference in *Loper Bright Enterprises v. Raimondo* will allow courts greater latitude in rejecting agency interpretations of statutes.
- In particular, *Chevron* deference applied to agency interpretations of statutes that were “silent or ambiguous with respect to the specific issue at hand.”
- Following *Loper Bright*, we expect the Trump administration to be affected by the greater judicial scrutiny of agency decision-making, making it more difficult for agencies to enact rules extending beyond express statutory authority.
- For example, House Republicans wrote to agency heads over the summer arguing that the Biden administration’s “aggressive interpretations” in rulemaking would be subject to review under *Loper Bright*.
- This also potentially could impair the ability of agencies to revise or rescind existing regulations (including to make them more favorable to the industry) without a strong basis to do so.

I

[Introduction](#)

II

KEY PERSONNEL

This section addresses the current composition of the financial services agencies, and the ease with which changes may occur.

III

[The Trump Administration's Financial Services Agenda](#)

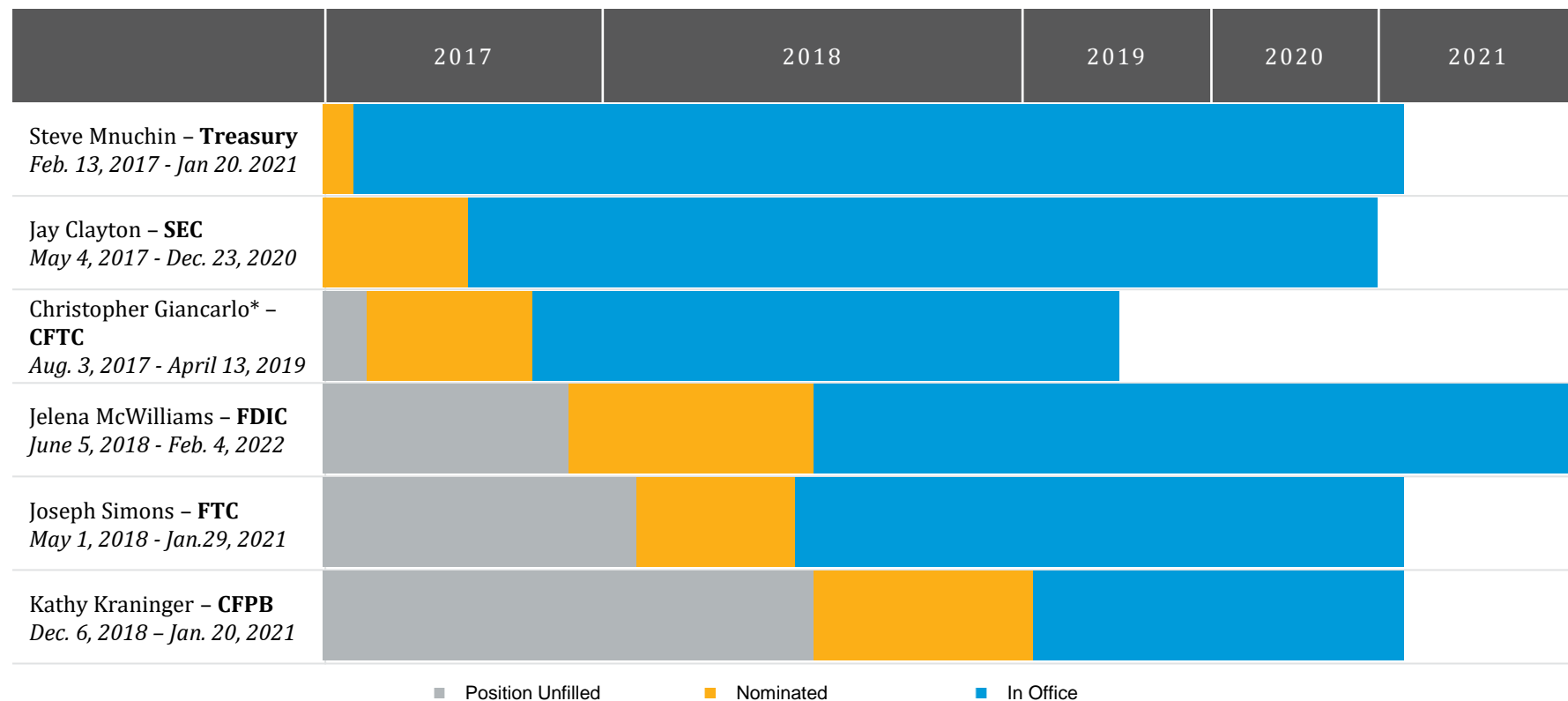
IV

[Dynamic on the Hill](#)

Key Takeaways

- Personnel is policy.
- Republican Senate control will allow the Trump administration to have more flexibility with personnel choices, although nominations and confirmations of new personnel often take time.

Speed of Trump's 2016 Head of Agency Nominations



*Christopher Giancarlo served as Acting Chairman from Jan. 1, 2017 until his official confirmation in August 2017.

Trump's Expected Use of Acting Agency Officials

- As shown on the prior slide, a number of Trump's appointments in 2016 came well after inauguration, with acting officials serving for extended periods.
- Trump has specifically embraced the role of acting officials in order to act quickly on his agenda.
- Under the Federal Vacancies Reform Act of 1998, typically the first assistant to a position becomes the acting officer, but the President may direct a senior official of the agency or a person serving in any other advice-and-consent position (meaning, Senate-confirmed appointees from anywhere in the executive branch) to serve as the acting officer.
- In the following slides, we have highlighted potential candidates who may serve in acting roles at key agencies.

Donald J. Trump



“

It's easier to make moves when they're acting. ... I like acting because I can move so quickly.”

Federal Reserve Board: Governors

Michelle W. Bowman (R)

Term ends:
January 2034



Christopher J. Waller (R)

Term ends:
January 2030



Lisa D. Cook (D)

Term ends:
January 2038



Adriana D. Kugler (D)

Term ends:
September 2027



Philip N. Jefferson (D)

Vice Chair

Term ends:
September 2027
(as Vice Chair)



Jerome H. Powell (R)

Chair

Term ends:
May 2026
(as Chair)



Michael S. Barr (D)

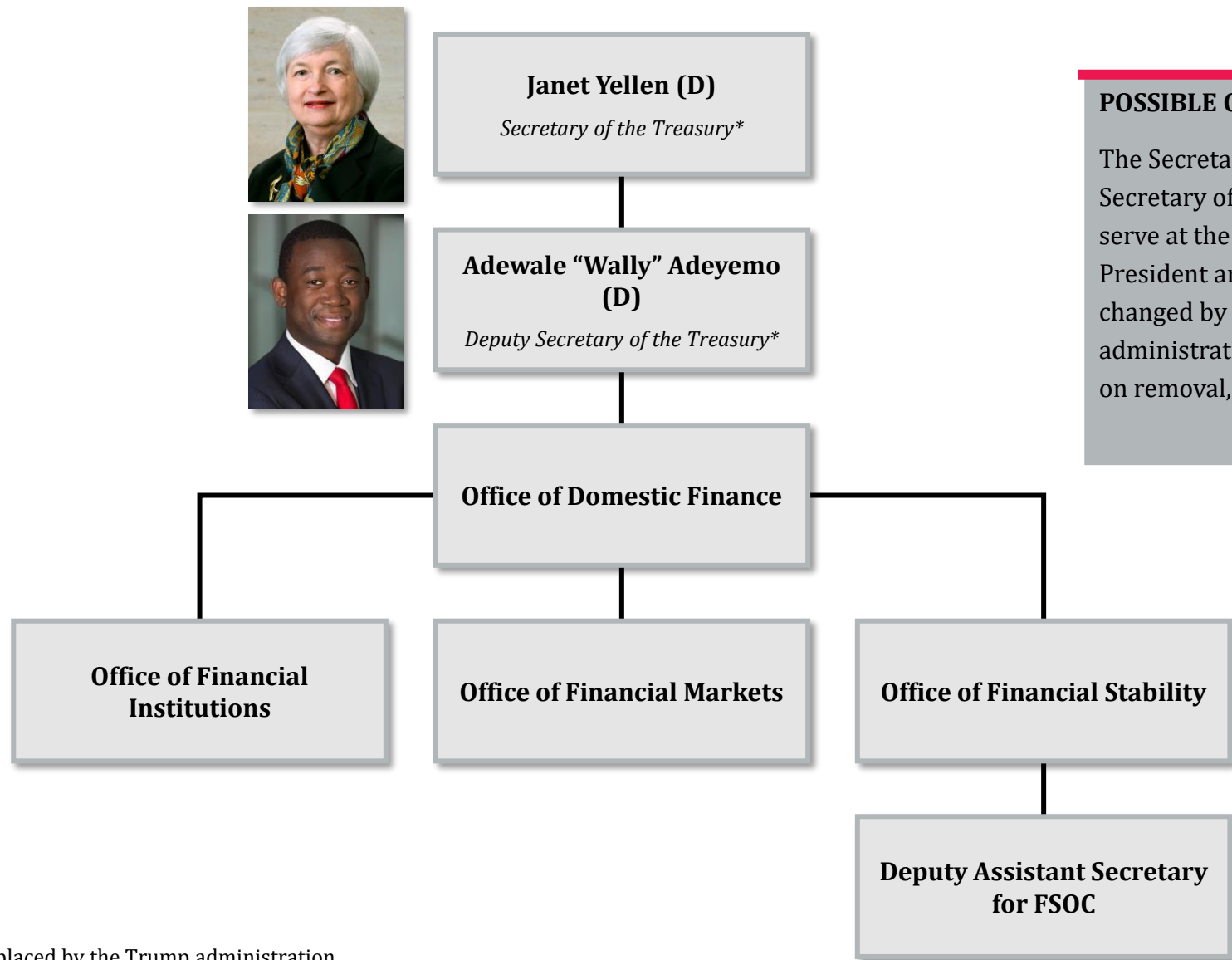
Vice Chair for Supervision

Term ends:
July 2026
(as Vice Chair for Supervision)

POSSIBLE CHANGES

Trump has reportedly discussed demoting Barr but allowing Powell to finish his term as Chair before replacing him. Senate confirmation would be needed to replace Barr. Trump adviser Scott Bessent also suggested previously that Trump could name a “shadow” FRB chair and seek Senate confirmation more than a year before May 2026. For details on removal, see slides [7-9](#).

Treasury Department: Key Positions



POSSIBLE CHANGES

The Secretary and Deputy Secretary of the Treasury serve at the pleasure of the President and may be changed by the Trump administration. For details on removal, see slides [7-9](#).

*Can be replaced by the Trump administration.

Office of the Comptroller of the Currency: Key Positions

POSSIBLE CHANGES

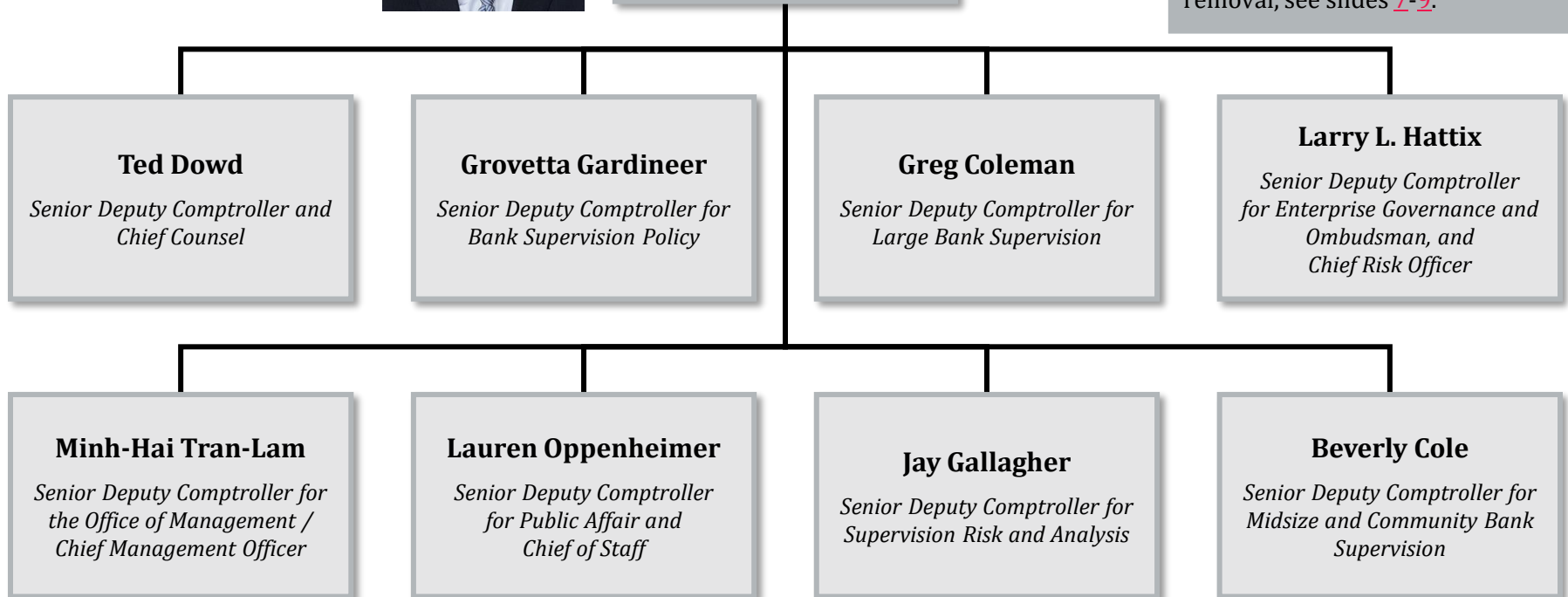
Acting: Reportedly, the Trump administration could consider tapping FDIC Director McKernan to serve as Acting Comptroller.

Under Trump's administration, a new Republican Comptroller would also change the FDIC composition to a 3-2 Republican majority. For details on removal, see slides [7-9](#).



Michael J. Hsu (D)

*Acting Comptroller
of the Currency**



Consumer Financial Protection Bureau: Key Positions



Rohit Chopra (D)

*Director**

Zixta Martinez

Deputy Director

Seth Frotman

General Counsel

Lorelei Salas

*Acting Assistant Director,
Supervision*

Eric Halperin

*Assistant Director,
Office of Enforcement*

David Bleicken

*Deputy Associate Director,
Supervision & Enforcement*

POSSIBLE CHANGES

Acting: Reportedly, assuming the Trump administration doesn't want to appoint a CFPB staffer, another Senate-confirmed official could serve as Acting Director (possibly FDIC Director McKernan).

Under Trump's administration, a new Republican CFPB Director would also change the FDIC composition to a 3-2 Republican majority. For details on removal, see slides [7-9](#).

Department of Justice: Key Positions



Merrick B. Garland
Attorney General



Lisa O. Monaco
*Deputy Attorney General of
the United States*

Benjamin C. Mizer
*Principal Deputy Associate
Attorney General*

POSSIBLE CHANGES

Trump's administration could move to quickly replace the AG and Deputy AG. For details on removal, see slides [7-9](#).

Acting: Contenders for Acting AG include Andrew Ferguson (an FTC commissioner), Curtis Gannon (a DOJ staffer), Prim Escalona (an Alabama federal prosecutor) and Joseph Cuffari (IG of DHS).

Federal Deposit Insurance Corporation: Board of Directors

Michael J. Hsu (D)*
*Director, Acting
Comptroller of the Currency*



Jonathan McKernan (R)
*Director
(Director term ends in May 2024)*



Rohit Chopra (D)*
*Director, Consumer
Financial Protection
Bureau*



Martin J. Gruenberg (D)*
Chairman, FDIC

*(Christy Goldsmith Romero
was nominated in June
2024 to succeed Mr.
Gruenberg—potentially
confirmed by year end.)*



Travis Hill (R)
Vice Chairman

*(Vice Chairman term ends
in December 2028)*

POSSIBLE CHANGES

-Under Trump's administration, a new Republican CFPB Director or Comptroller would alone change the FDIC composition to a 3-2 Republican majority.

-As Chair McWilliams (R) experienced under Biden, a majority of board members from the other party can change the FDIC's focus regardless of the party of the Chair.

-Acting: Reportedly, Hill (or possibly Bowman) is seen as likely to serve as Acting Chair. McKernan may be tapped for another acting role at a different agency.

For details on removal, see slides [7-9](#).

Securities and Exchange Commission: Commissioners

Jaime Lizárraga (D)

Commissioner

Term ends:
June 2027



Gary Gensler (D)

Chairman

Term ends:
June 2026



Mark T. Uyeda (R)

Commissioner

Term ends:
June 2028



Caroline A. Crenshaw (D)

Commissioner

Term ends:
June 2024

*(Reappointment in process for
term ending in June 2029)*



Hester M. Peirce (R)

Commissioner

Term ends:
June 2025

“

On day one, I will fire Gary Gensler and appoint a new SEC Chair.” - *Trump’s speech at Bitcoin conference in July 2024.*

Acting: Reportedly, Commissioner Peirce or Commissioner Uyeda likely to serve as acting Chair.

For details on removal, see slides [7-9](#).

Commodity Futures Trading Commission: Commissioners

Summer K. Mersinger (R)

Commissioner

Term ends:
April 2028



Kristin N. Johnson (R)

Commissioner

Term ends:
April 2025

Rostin Behnam (D)

Chairman

Term ends:
June 2026



Christy Goldsmith Romero (D)

Commissioner

Term ends:
April 2024

(Nominated in June 2024 to replace FDIC Chairman Martin Gruenberg. President Biden has nominated Julie Brinn Siegel to replace Mrs. Romero.)

Caroline D. Pham (R)

Commissioner

Term ends:
April 2027



POSSIBLE CHANGES

Trump would reportedly replace the CFTC chair with another Commissioner, potentially Republican Commissioners Summer Mersinger or Caroline Pham.

For details on removal, see slides [7-9](#).

Federal Trade Commission: Commissioners



Lina Khan (D)

Chair

Term ends: September 2024



Rebecca Slaughter (D)

Commissioner

Term ends: September 2029



Alvaro Bedoya (D)

Commissioner

Term ends: September 2026



Melissa Holyoak (R)

Commissioner

Term ends: September 2025



Andrew Ferguson

Commissioner

Term ends: September 2030

POSSIBLE CHANGES

Vance supports Khan, but it is not clear that Trump does. The President designates the chair, so Khan could be demoted by the President without cause.

For details on removal, see slides [7-9](#).

Financial Stability Oversight Council (“FSOC”)

Voting Members

Secretary of the Treasury (Chair of the Council)	Janet Yellen
FRB Chairman	Jerome H. Powell (term as Chair ends May 2026)
Comptroller of the Currency (OCC)	Michael Hsu (can be replaced by the Trump administration)
Director of the CFPB	Rohit Chopra (can be replaced by the Trump administration)
Chair of the SEC	Gary Gensler (term ends in 2026)
Chair of the FDIC	Martin J. Gruenberg (stepping down, Christy Goldsmith Romero nominated to succeed him)
Chair of the CFTC	Rostin Behnam (term ends June 2026)
Director of the Federal Housing Finance Agency	Sandra L. Thompson (term ends in 2027)
Chair of the National Credit Union Administration	Todd M. Harper (term ends April 2027)
Independent member with insurance expertise: appointed by President and confirmed by Senate for a six-year term.	Thomas Workman (term ends March 2024)

Non-Voting Members

Director of the Office of Financial Research	James Martin (term ends in 2027)
Director of the Federal Insurance Office	Steven Seitz (appointed by the Treasury Secretary)
State insurance Commissioner designated by the state insurance Commissioners	Beth Dwyer (Rhode Island Superintendent of Insurance)
State banking supervisor designated by the state banking supervisors	Adrienne A. Harris (NYDFS)
State securities Commissioner (or officer performing like functions) designated by the state securities Commissioners	Melanie Senter Lubin

Note: The FSOC deputies committee is made up of members designated by the voting and nonvoting members of the Council.

Potential Trump Picks

Name	Snapshot of Relevant Experience	Agency
Jay Clayton	Former SEC Chair	Treasury
Robert Lighthizer	U.S. Trade Representative during Trump Administration	Treasury
Bill Hagerty	Senator	Treasury
Kevin Warsh	Former FRB Governor	Treasury or the Federal Reserve
Howard Lutnick	CEO of Cantor Fitzgerald	Treasury
Larry Kudlow	Director of the National Economic Council during the Trump Administration	Treasury
John Paulson	Founder of Paulson & Co. Inc.	Treasury
Scott Bessent	Hedge fund manager	Treasury
Jeff Yass	Co-founder of Susquehanna International Group	Treasury
Kevin Hassett	Former Senior Advisor and Former Head of the Council of Economic Advisers during the Trump Administration	Federal Reserve
James Bullard	Former CEO and President of FRB of St. Louis	Federal Reserve
Chris Waller	Current FRB Governor	Federal Reserve
Michelle Bowman	Current FRB Governor	Federal Reserve
Lawrence Lindsey	Former Deputy Director of the National Economic Council under Bush Administration	Federal Reserve
Travis Hill	Current FDIC Vice Chairman	FDIC or OCC
Jonathan McKernan	Current FDIC Director	OCC, FDIC, or FHFA
Keith Noreika	Lawyer at Patomak Global Partners and Former Acting Comptroller	OCC or FDIC

Potential Trump Picks

Name	Snapshot of Relevant Experience	Agency
Dan Gallagher	Former SEC Commissioner	SEC
Chris Giancarlo	Former CFTC Chair	SEC
Hester Peirce	SEC Commissioner	SEC
Dalia Blass	Former Director of SEC's Division of Investment Management	SEC
Aileen Cannon	U.S. District Court Judge for Southern District of Florida	DOJ
Jeffrey Clark	Former Justice Department Attorney	DOJ
Mike Lee	Utah Senator	DOJ
Josh Hawley	Missouri Senator	DOJ
Eric Schmitt	Missouri Senator	DOJ
Todd Blanche	Founding Partner of Blanche Law	DOJ
Jeffrey Jensen	Former U.S. Attorney for the Eastern District of Missouri	DOJ
Emil Bove	Partner at Blanche Law	DOJ
Will Levi	Barr's Former Chief of Staff	DOJ
John Ratcliffe	Former Director of National Intelligence	DOJ
Brian Johnson	Former Deputy Director of the CFPB	CFPB

I

[Introduction](#)

II

[Key Personnel](#)

THE TRUMP ADMINISTRATION'S FINANCIAL SERVICES AGENDA

This section reviews what we know of Trump's financial services agenda. Other than crypto, financial services was not a top policy priority for Trump on the campaign trail. However, Trump has a history of actions on financial services that can inform his potential future agenda.

III

[III.A. REGULATORY AGENDA.....31](#)

[III.B. MERGER REVIEW.....42](#)

[III.C. ENFORCEMENT AGENDA.....45](#)

IV

[Dynamic on the Hill](#)

Key Takeaways

- Trump does not have a clear and comprehensive financial services agenda.
- However, he has championed specific causes, like crypto, and believes in a de-regulatory agenda that may favor innovation in fintech such as decentralized finance and peer to peer lending.
- In his prior administration, he was seen as friendly to the industry, though some on Wall Street note that his trade war with China was costly and his administration was marked by greater instability.

III.A. REGULATORY AGENDA

Biden Administration Regulatory Initiatives - Proposed

The slide reviews some of the current proposed regulations by the Biden administration. Regulations with Republican dissent may be less likely to move ahead (at least without material changes) during Trump's administration. Some Biden officials (e.g., Rohit Chopra, with Basel) may now push to try to finalize rules this year.

Proposed Regulations

- Basel III Endgame (dissent: FRB Governor Michelle Bowman [statement](#), FDIC Vice Chair Travis Hill [statement](#), FRB Gov. Christopher Waller [statement](#)) (Congressional dissent: Con. Tim Scott (R) [statement](#), Con. Luetkemeyer (R) [statement](#), 39 Republican Senators [called on Biden to withdraw](#))
- Federal Reserve Regulation II (Debt Interchange Fees and Routing) (dissent: Bowman [statement](#))
- FDIC Notice of Proposed Rulemaking on Brokered Deposits (dissent: Hill [statement](#))
- Long-term debt
- Statements and guidance on crypto issues
- Liquidity rules
- CFPB's credit card late fees cap (Congressional dissent: [Tim Scott and other Republican congressmen](#))

Biden Administration Regulatory Initiatives - Final

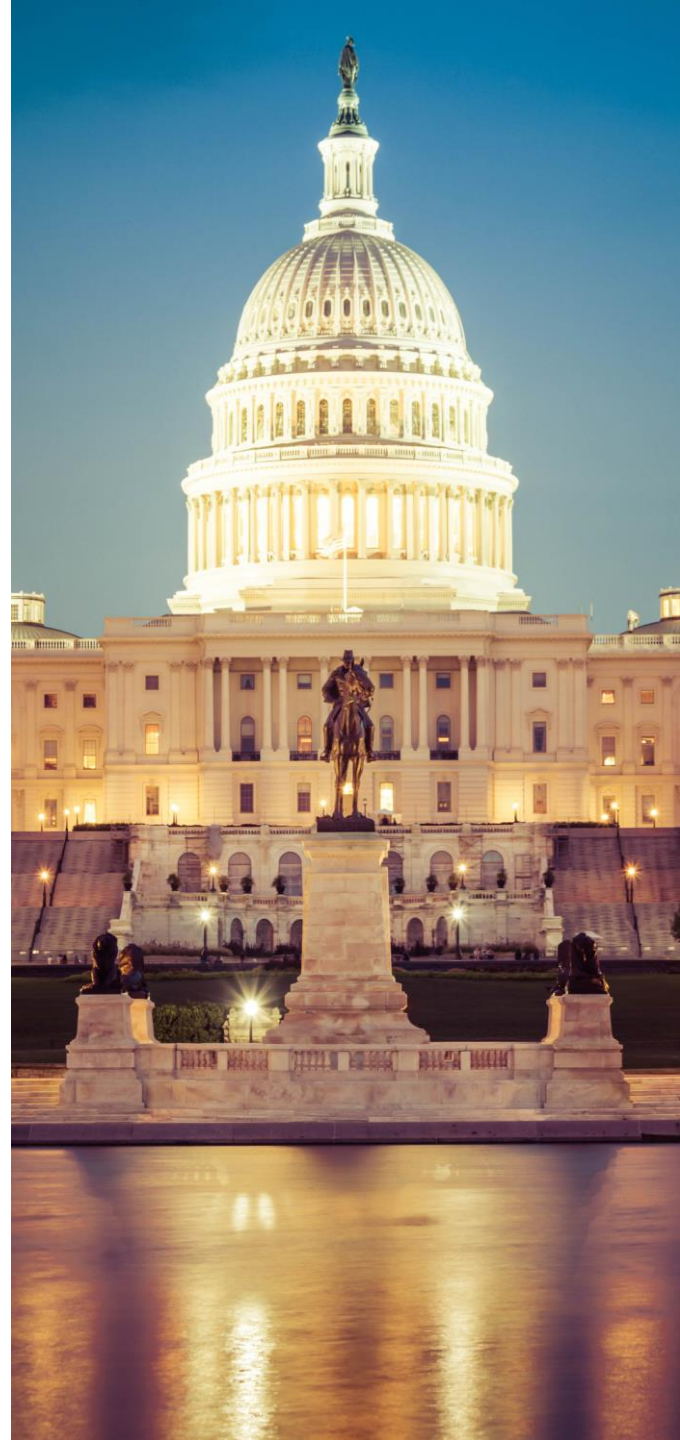
The slide reviews some of the finalized regulations by the Biden administration. Regulations with Republican dissent would be more likely to be revisited during a Trump administration or revoked under the CRA lookback period, if relevant (see slides [34](#) and [35](#) on CRA lookback).

Final Rules

- FSOC Guidance on Nonbank Financial Company Determinations (this rolled back the Trump administration's deregulation)
- SEC rules to standardize and enhance climate-related disclosures for investors (dissent: SEC Commissioner Mark Uyeda statement, Commissioner Hester Peirce statement) (Congressional dissent: Tim Scott statement and many other congressmen)
- FinCEN's Corporate Transparency Act (there have been legal challenges and opposition by members of Congress)
- FDIC's final guidance to enhance banking resolution plans (dissent: Vice Chair Hill statement, Board member McKernan)
- CFPB "open banking" rule
- OCC Community Reinvestment Act (dissent: Vice Chairman Hill statement, Governor Bowman statement)
- FinCEN final rule on AML for Financial Advisors and Certain Residential Real Estate Transactions
- Analysis of bank failures (leading to increased supervision)
- Federal Reserve's final guidance for master accounts

Congressional Review Act (CRA)

- Congress can potentially use the CRA to overturn federal agency rules (as defined under APA Section 551)—even those that are not subject to traditional notice-and comment rulemaking, such as guidance documents and policy memoranda. However, the CRA does provide exceptions for rules of particular applicability, rules relating to agency management and personnel, and rules relating to agency organization that do not substantially affect the rights of non-agency parties.
- This is a potentially powerful tool during the so-called “lookback period” in which the next Congress can review agency actions that occurred during the prior Congress. It is a blunt tool that also limits promulgation of similar rules in the future. Since its enactment, the CRA has been used to overturn a total of 20 rules.
- A CRA action would require passing both houses of Congress and can be vetoed by the President. Under certain circumstances, the Senate can consider a disapproval resolution under “fast track” parliamentary procedures that permit a simple majority to call up and reach a final vote on the joint resolution without a cloture process. As a practical matter, this is likely only relevant if Republicans control both chambers of Congress.
- While it is currently uncertain what the final CRA lookback period will be for the current Congress (since it depends on the date of the *sine die* adjournment of the House and Senate), the Congressional Research Service estimates that any Biden administration rules submitted on or after **August 1, 2024** would likely be subject to the CRA lookback provision and could potentially be overturned by a Republican Congress.



Biden Final Rules Potentially Subject to CRA Lookback

Through the CRA, a Republican-controlled Congress could repeal significant recent rules on bank mergers and anti-money laundering, among others, which could stimulate investment and consolidation in the sector.

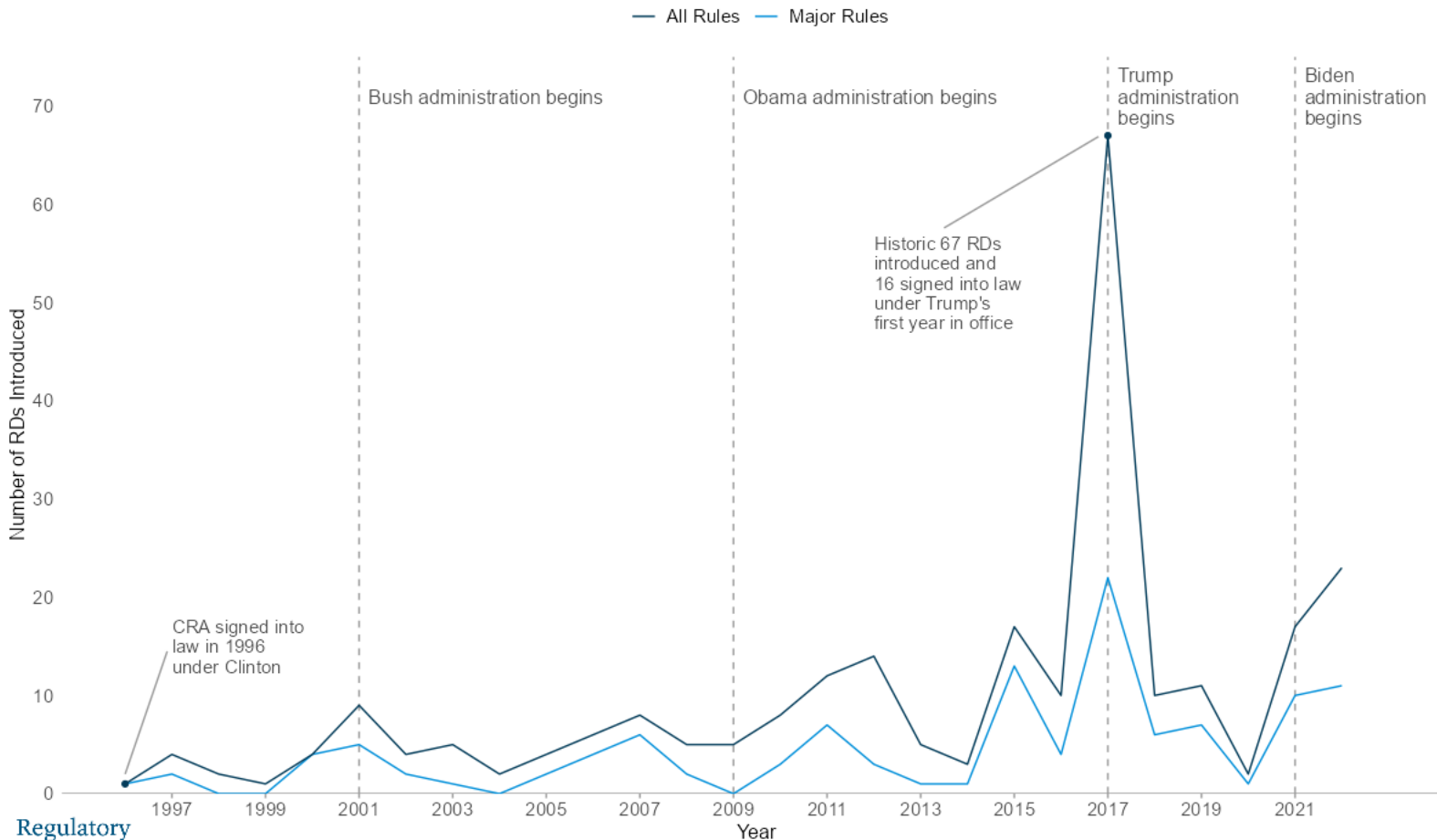
**Please note that the list below only includes a select list of rules published after August 1, 2024.*

Rule	Date	Agency	Dissent
Covered Clearing Agency Resilience and Recovery and Wind-Down Plans	October 25, 2024	SEC	
OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches	October 22, 2024	OCC & Department of Treasury	
FDIC Official Signs and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo	October 22, 2024	FDIC	
Required Rulemaking on Personal Financial Data Rights	October 22, 2024	CFPB	
Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders	October 8, 2024	SEC	
Final Statement on Policy on Bank Merger Transactions	September 27, 2024	FDIC	FDIC Vice Chair Travis Hill and Director Jonathan McKernan opposed the statement.
Business Combinations Under the Bank Merger Act	September 25, 2024	OCC & Department of Treasury	
AML/CFT Program & Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers	September 4, 2024	FinCEN	
AML Regulations for Residential Real Estate Transfers	August 29, 2024	FinCEN	

CRA Data on Number of Resolutions of Disapproval

CRA Use Trending Upwards, Including Outside of Lookback Period, for both Major and Non-major Rules

Resolutions of Disapproval (RDs) Introduced by Year, 1996-2022



Regulatory Studies Center
THE GEORGE WASHINGTON UNIVERSITY

Source: Original dataset, Daniel Perez and Sarah Hay, compiled from Congress.gov, FederalRegister.gov, GAO.gov, and RegInfo.gov

Trump Administration Regulatory Agenda

Trump's agenda is de-regulatory, and, according to reporting, Trump has considered curtailing the power of U.S. financial regulators and scaling back the Dodd-Frank Act.



Trump Administration Regulatory Agenda

Trump's platform includes a deregulatory focus. Public reporting also suggests that Trump may be aligned with Republicans on other issues, such as:

Bank Capital	The Basel III Endgame proposal would potentially not move ahead, at least in its current form, according to reports.
Crypto	Trump stated that he has “a plan to ensure the United States will be the crypto capital of the planet and the Bitcoin superpower of the world.” He also said, “If crypto is going to define the future I want it to be mined, minted and made in the U.S.A.”
Anti-ESG	Trump is opposed to a number of environmental initiatives. For example, he has said: “My plan will be to terminate the Green New Deal, which I call the Green New Scam, and rescind all unspent funds under the misnamed Inflation Reduction Act.” He would likely be opposed to ESG efforts.
Non-banks	According to reporting, Trump would likely not seek regulation of non-banks, other than pushback based on ESG concerns.
Artificial Intelligence (AI)	The Trump Campaign Platform states, “[w]e will repeal Joe Biden’s dangerous Executive Order that hinders AI Innovation and imposes Radical Leftwing ideas on the development of this technology. In its place, Republicans support AI Development rooted in Free Speech and Human Flourishing.”
Interest Rates	When asked about setting interest rates, Trump stated, “I feel that the President should have at least [a] say in there, yeah. I feel that strongly.”

“

Republicans will slash Regulations that stifle Jobs, Freedom, Innovation and make everything more expensive. We will implement Transparency and Common Sense in rulemaking. ...

Republicans will end Democrats' unlawful and unAmerican Crypto crackdown and oppose the creation of a Central Bank Digital Currency. We will defend the right to mine Bitcoin, and ensure every American has the right to self-custody of their Digital Assets, and transact free from Government Surveillance and Control.”

-Trump Platform

JD Vance

Bank Failure Prevention Act

In November 2023, Senator Vance called for the passage of the Bank Failure Prevention Act. Vance stated: “In the run up to the collapse of Signature Bank and Silicon Valley Bank, federal regulators responsible for overseeing our financial system failed to do their jobs. It would be reckless and irresponsible for us to sit back and rely on a regulatory regime that has proven itself to be inadequate. With commonsense legislation such as this bill, we can protect consumers and our financial system by reducing the risk of additional bank failures.”

Failed Bank Executives Clawback Act

Senator Vance worked with Senator Warren and other members of the Senate Banking, Housing, and Urban Affairs Committee on this bipartisan legislation.

Crypto

In June, Vance was reportedly circulating a draft legislation on crypto that would take an “industry-friendly” approach.

Attitude Towards Wall Street

“We’re done...catering to Wall Street. We’ll commit to the working man.”

JD Vance



“

I look at Lina Khan as one of the few people in the Biden administration that I think is doing a pretty good job.”

Project 2025

Trump has repeatedly disavowed Project 2025 following Democrats' successful push to drive negative voter sentiment about it. However, many former Trump officials have worked on it, and it's possible some of these ideas could make their way into a Trump agenda. Project 2025 has comprehensive plans for numerous financial regulatory agencies, including, for example, these changes at key financial regulatory agencies:

- Federal Reserve

- Appoint a commission to explore alternatives to the Federal Reserve.
- "Eliminate 'full employment' from the Fed's mandate, requiring it to focus on price stability alone."
- "[C]lamp down on the Fed's incorporation of environmental, social, and governance factors into its mandate, including by amending its financial stability mandate."

- SEC

- Fundamentally reform the securities laws governing issuers, broker-dealers, exchanges, and other market participants.
- Dramatically reduce the size of the SEC.
- Abolish PCAOB and FINRA.
- Utilize broad "general exemptive authority."

- CFPB

- Abolish the CFPB.
- Before abolishment: "Specify the nature of 'deceptive, unfair, and abusive' practices to define the scope of the CFPB mission more precisely."

- Treasury

- "Congress should repeal Title I, Title II, and Title VIII of the Dodd-Frank Act." These include the authorities creating FSOC.
- "Congress should repeal the Corporate Transparency Act, and FinCEN should withdraw its poorly written and overbroad beneficial ownership reporting rule."
- "Treat the participation in a New York Times critical race theory or DEI initiative, without objecting on constitutional or moral grounds, as per se grounds for termination of employment [for Treasury officials]."

III.B. MERGER REVIEW

Bank M&A Under Biden

December 2020: Maxine Waters 2020 Letter on Bank Mergers

“Your Administration and your appointees must be aggressive and use the tools at your disposal to strengthen the merger and acquisition and anti-trust review process to end the era of the government blindly rubber stamping those applications.”

December 2023: 2023 Merger Guidelines Published by DOJ and FTC

Among other changes, the threshold for when a merger is presumptively anti-competitive was lowered.

September 2024: Justice Department Withdraws from 1995 Bank Merger Guidelines

With their withdrawal, the DOJ emphasized that the 2023 Merger Guidelines “remain its sole and authoritative statement across all industries.”

2020

2021

2022

2023

2024

July 2021: President Biden’s Executive Order on Promoting Competition in the American Economy

Biden’s Executive Order asked the DOJ and banking agencies to: “review current practices and adopt a plan . . . for the revitalization of merger oversight under the Bank Merger Act and the Bank Holding Company Act of 1956.”

February 2024: Maxine Waters 2023 Letter on Bank Mergers

“We write to express our strong concerns about the lack of progress your agencies have made in updating your outdated bank merger review procedures. For far too long, these procedures have been equated by experts to be a rubber-stamping process, where virtually all applications are approved while industry consolidation continues.”

September 2024: FDIC and OCC Issue Final Policy Statements on Bank Mergers

While not seen as favorable to large bank mergers, application may depend on agency personnel post-election.

Possible Change to M&A Approach Under New Administration

- Trump could potentially appoint more regulators that take a less restrictive approach to bank M&A.
 - As noted on [slide 11](#), if he desired to do so, Trump could revoke on Day One Biden's Executive Order unfavorable to mergers.
 - As noted on slides [7-10](#), [19](#) and [20](#), particularly if he has a Republican Congress; Trump could put in leadership at the OCC and CFPB, and thereby at least affect the FDIC board, in a manner favorable to M&A.
 - As noted on [slide 8](#), Trump also could replace leadership of the DOJ.
 - Such changes may lead to recent FDIC and OCC merger guidelines being rescinded, altered, or at least interpreted more favorably to M&A.
- Even during the finalization of the FDIC's M&A guidance in September 2024, FDIC Vice Chairman Hill (R) voiced opposition to this approach, possibly presaging a Republican viewpoint in a Trump administration.



Travis Hill, FDIC Vice Chairman

I voted against the [Statement of Policy on bank merger transactions], arguing that it “move[d] in the wrong direction, potentially making the process longer, more difficult, and less predictable.” Today, the FDIC Board is considering finalizing that proposal. While the final SOP makes a few small improvements over the proposal, I will vote against it for largely the same reasons.”

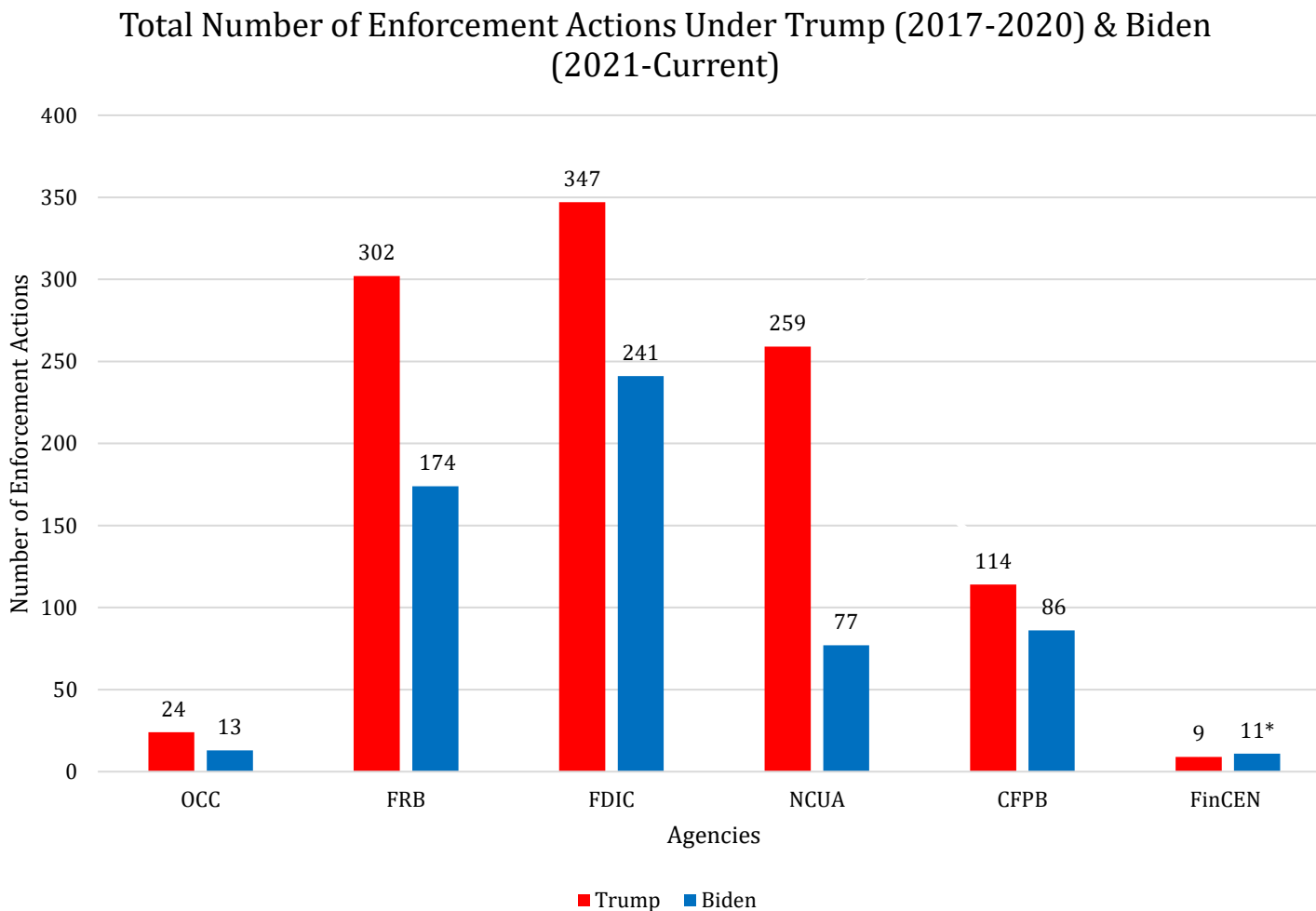
- However, as noted on [slide 40](#) above, JD Vance has said “[we’re] done...catering to Wall Street” and has praised Lina Khan’s work at the FTC.

III.C. ENFORCEMENT AGENDA

Continued Enforcement Activities

- The Trump administration is expected to continue to enforce cross-border related activities such as anti-money laundering laws and sanctions compliance.
- For example, there is uniformity of view within both parties on the need for enhanced enforcement around both inbound and outbound Chinese investment activities.

Trump Pursued Enforcement Actions in His First Term



Particularly After the 2023 Financial Crisis, Bank Enforcement Actions Increased Significantly

Severe enforcement actions issued to US banks since Q2 2021



Data compiled Sept. 19, 2024.

Analysis limited to severe enforcement actions issued to US commercial banks, savings banks, and savings and loan associations from April 1, 2021, to Sept. 19, 2024. Excludes severe enforcement actions issued to bank holding companies, thrift holding companies, credit unions, nondepository trusts and companies with a foreign banking organization charter.

Severe enforcement actions include prompt corrective action directives, cease and desist orders, consent orders and formal agreements that were issued and made public by federal regulatory agencies between April 1, 2021, and Sept. 19, 2024, including those severe enforcement actions that were later terminated.

* Quarter to date through Sept. 19, 2024.

Source: S&P Global Market Intelligence.

© 2024 S&P Global.

I

[Introduction](#)

II

[Key Personnel](#)

III

[Trump Administration's Financial Services Agenda](#)

IV

DYNAMIC ON THE HILL

The House is not yet called. Regardless, given election losses and retirement, both the Senate Banking Committee and House Financial Services Committee will see leadership changes.

118th Congress' "Lame Duck" Agenda

Congress returns on November 12th to the two-month long "lame duck" session before the 119th Congress starts in January. The outcomes of the presidential and congressional elections could have a significant impact on Congress' agenda.

National Defense Authorization Act (NDAA)

"We have to be ready when we come back to go right to the 'Big Four' meeting, and that's our objective," Senate Armed Services Chairman Jack Reed (D) told reporters, referring to the chairmen and ranking members of the Armed Services committees. Those negotiations would clear the way for the release of a final, compromise version of the fiscal 2025 National Defense Authorization Act, which has been passed every year for the last 60 years.

Appropriations

The government is currently funded through December 20th, with Speaker Johnson trying to avoid passing a catch-all omnibus package. However, the incoming President and congressional leaders might prefer to clear the decks for 2025: "I would prefer, frankly, to get my business done and not show up with immediate government shutdown," House Appropriations Chair Tom Cole (R). House Republicans are also targeting the Justice Department's appropriations as part of their campaign against what they call the "weaponization of the federal government."

Outbound Investment & Artificial Intelligence

House and Senate leaders are negotiating a deal to address concerns about artificial intelligence and are hoping to move a bill in the lame duck period. Specifically, House leadership is highly motivated in restricting outbound investments to China and other foreign adversaries such as with the ENFORCE Act. It's also likely a potential AI package could be tacked onto other must-pass legislation.

Crypto

Rep. French Hill (R), Chair of the House's Digital Assets Subcommittee recently said he is "still optimistic" a market structure bill for crypto and a framework for so-called stablecoins might move forward, in some way, during the upcoming lame duck session of Congress. One potential bill could be the Financial Innovation and Technology for the 21st Century Act, or "FIT 21."

Key Takeaways

- It's not clear whether Republicans can hold the House and which individuals will lead the key financial services committees, given election losses, retirement and uncertainty around committee leadership decisions.
- Congress is slated to be more pro-crypto than ever before, and we may see progress on bipartisan crypto legislation.
- If Republicans control both chambers of Congress in addition to the White House, they could revoke rulemaking in the CRA lookback period.

Senate Committee on Banking, Housing, and Urban Affairs



Sherrod Brown (D)

Current Chairman

**Lost his seat. Sen. Warren, Sen. Reed, Sen. Warner and Sen. Van Hollen are potential replacements.*



Tim Scott (R)

Current Ranking Member; Presumed Incoming Chairman (unless nominated to serve in the Trump cabinet)—if so, Sen. Mike Rounds is likely replacement.

Snapshot of Key Issues

Strong bank capital requirements
Prohibiting discrimination
Transparency in small business lending

Snapshot of Key Issues

Opposition to Basel III Endgame
Opposition to the CFPB's credit card fee rule
Pro-crypto

Potential Brown Replacements: Snapshot of Key Issues

Sen. Warren: Consumer protection, 21st Century Glass-Steagall Act (to break up big banks), financial stability concerns for non-banks, executive compensation rules

Sen. Reed: Foreclosure prevention, consumer protection, student loan assistance

Sen. Warner: Housing finance reform, consumer protection

Sen. Van Hollen: Consumer protection, loan forgiveness, mortgage assistance

Potential Scott Replacement: Snapshot of Key Issues

Sen. Rounds: Artificial intelligence; encouraging capital formation, economic growth and consumer protection; bureaucratic oversight

House Financial Services Committee



Patrick McHenry (R)

Current Chairman

**McHenry is retiring. Rep. Andy Barr, Rep. French Hill, Rep. Frank Lucas and Rep. Bill Huizenga are all contenders for his seat.*

Snapshot of Key Issues

Deregulation
Access to capital



Maxine Waters (D)

Current Ranking Member

Snapshot of Key Issues

Affordable housing
Borrower access to credit
Anti-discrimination laws
Overhauling credit reporting system.

Potential McHenry Replacements

Snapshot of Key Issues

Rep. Barr: Increasing oversight of financial regulators, opposition to ESG, weakening the CFPB, repealing regulations related to investing, and promoting regulations for cryptocurrency.

Rep. Hill: Opposition to digital assets, proposal for promoting AI innovation in financial services.

Rep. Lucas: Opposition to the SEC's climate disclosure rule; opposition to Basel III Endgame.

Rep. Huizenga: Opposition to the SEC's climate disclosure rule.

Contact Information



Gregory J. Lyons
Partner | New York
+1 212 909 6566
gjlyons@debevoise.com



Andrew J. Ceresney
Partner | New York
+1 212 909 6947
aceresney@debevoise.com



Satish M. Kini
Partner | Washington, D.C.
+1 202 383 8190
smkini@debevoise.com



Helen V. Cantwell
Partner | New York
+1 212 909 6312
hcantwell@debevoise.com



Charu Chandrasekhar
Partner | New York
+1 212 909 6774
cchandra@debevoise.com



Courtney M. Dankworth
Partner | New York
+1 212 909 6758
cmdankwo@debevoise.com



Erez Liebermann
Partner | New York
+1 212 909 6224
eliebermann@debevoise.com



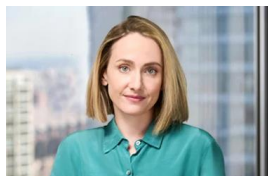
Gordon Moodie
Partner | New York
+1 212 909 6949
gsmoodie@debevoise.com



Jeff Robins
Partner | New York
+1 212 909 6526
jrobbins@debevoise.com



Kristin A. Snyder
Partner | San Francisco
+1 415 738 5718
kasnyder@debevoise.com



Caroline N. Swett
Partner | New York
+1 212 909 6432
cnswett@debevoise.com



Ted Hassi
Partner | Washington, D.C.
+1 212 383 8135
thassi@debevoise.com



Patrick Fuller
Counsel | Washington, D.C.
+1 202 383 8119
pafuller@debevoise.com



Chen Xu
Counsel | New York
+1 212 909 6171
cxu@debevoise.com



Benjamin Collins-Wood
Counsel | New York
+1 212 909 6724
bpwood@debevoise.com



Carter Burwell
Counsel | Washington D.C.
+1 202 383 8149
cburwell@debevoise.com



Alexandra N. Mogul
Associate | New York
+1 212 909 6444
anmogul@debevoise.com



Taylor Richards
Associate | Washington, D.C.
+1 202 383 8009
tmrichar@debevoise.com

Contact Information

Elliott Werner

Associate | New York

+1 212 909 7486

ewerner@debevoise.com

Yair Strachman

Law Clerk | New York

+1 212 909 7477

ystrachman@debevoise.com

Brynn D'Avanzo

Legal Assistant | New York

+1 202 909 1026

bdavanzo@debevoise.com